

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DOMINIC MOODY,

Plaintiff,

v.

STEVEN PAUL,

Defendant.

Case No. 1:23-cv-01541-NODJ-EPG (PC)

FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT PLAINTIFF'S IFP
APPLICATION BE DENIED FOR FILING A
FALSE IFP AFFIDAVIT

(ECF No. 2)

OBJECTIONS, IF ANY, DUE WITHIN
FOURTEEN (14) DAYS

Plaintiff Dominic Moody is a *pro se* prisoner in this civil rights action. This matter is before the Court on Plaintiff's application to proceed *in forma pauperis* (IFP). (ECF No. 2). For the reasons given below, the Court recommends that Plaintiff's IFP application be denied for filing a false IFP affidavit.

I. BACKGROUND

Plaintiff filed this case pursuant to 42 U.S.C. § 1983 on October 31, 2023, with a complaint dated October 25, 2023. (ECF No. 1). Plaintiff filed an IFP application (which included an affidavit) also dated October 25, 2023. (ECF No. 2). Importantly, Plaintiff stated that (1) he received no money from any source over the last twelve months; and (2) that he had no cash or any other assets. (ECF No. 2).

However, according to Plaintiff's trust account statement, the information in his IFP application is false. (ECF No. 5). Among other things, the statement, which lists transactions from

May 1, 2023, to October 28, 2023, shows that (1) Plaintiff routinely received deposits in his account; (2) he at times had over the formerly \$402¹ filing fee in his account; and (3) that he had an account balance of \$227.04 as of October 19, 2023 (the last date on the statement before he signed his IFP application). However, Plaintiff spent \$216.65 from his account on October 11, 2023—two weeks before he dated his IFP application—on unspecified sales, which brought his account balance down from \$443.99 to \$227.34.

Noting that it appeared that Plaintiff intentionally made false statements on his IFP affidavit, the Court ordered Plaintiff to show cause why this case should not be dismissed for filing a false IFP affidavit. (ECF No. 6). On November 13, 2023, Plaintiff filed declaration stating that (1) he was not currently employed nor had he been employed from July 2022 to November 2023; (2) that his last date of employment was May 2022; (3) that he depends on his mother for support while he is in prison; (4) that he has no cash or other assets; and (5) that his case should not be dismissed because he has proof regarding his claim. (ECF No. 7).

II. ANALYSIS

The Court normally requires a filing fee paid in full to proceed in a civil action. However, a federal statute, 28 U.S.C. § 1915, permits a plaintiff to commence a lawsuit without prepaying a filing fee. This statute requires “an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor.” § 1915(a)(1). In addition to filing an affidavit, a prisoner “shall submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined.” § 1915(a)(2).

Importantly, under § 1915(e)(2)(A), a “court shall dismiss” a case if it determines that “the allegation of poverty is untrue.” But “[t]o dismiss [a] complaint pursuant to § 1915(e)(2), a showing of bad faith is required, not merely inaccuracy.” *Escobedo v. Applebees*, 787 F.3d 1226, 1235 n. 8 (9th Cir. 2015). “[C]ourts routinely dismiss with prejudice cases upon finding that the plaintiff has intentionally withheld information that may have disqualified plaintiff from obtaining IFP status or has otherwise manipulated his finances to make it appear that a plaintiff is

¹ The Court’s filing fee recently increased to \$405 during the pendency of this case.

1 poorer than he actually is; i.e., where the facts show that the inaccuracy on the IFP application
2 resulted from the plaintiff's bad faith.” *Witkin v. Lee*, No. 2:17-CV-0232-JAM-EFB P, 2020 WL
3 2512383, at *3 (E.D. Cal. May 15, 2020), *report and recommendation adopted*, No. 2020 WL
4 4350094 (E.D. Cal. July 29, 2020).

5 With these standards in mind, the Court concludes that Plaintiff’s allegation of poverty is
6 untrue. Specifically, Plaintiff claimed to (1) receive no funds from any source from the last twelve
7 months and (2) have no cash or other assets. (ECF No. 2). But according to Plaintiff’s trust
8 account statement, which Plaintiff does not contest the accuracy of, Plaintiff received routine
9 deposits, *e.g.*, \$100 on May 6, 2023; \$240 on June 3, 2023; \$100 on July 4, 2023; \$50 on August
10 2, 2023; \$220 on September 19, 2023; and \$120 on October 8, 2023. And Plaintiff now admits in
11 his declaration that he receives funds from his mother. (ECF No. 7, p. 2).

12 While Plaintiff continues to claim that he has no assets, this assertion is false for purposes
13 of the relevant time at issue here. (*Id.*). Plaintiff had \$227.04 as of October 19, 2023, which is the
14 last date on the statement before he signed his IFP application. However, he spent \$216.65 from
15 his account on October 11, 2023—two weeks before he dated his IFP application—on
16 unspecified sales, which brought his account balance down from \$443.99 to \$227.34. Had he not
17 spent this money, he could have paid the full filing fee. But even setting his expenditure aside, he
18 still had funds at the time he filed his IFP application.

19 Having determined that the allegations in the affidavit are untrue, the Court considers
20 whether Plaintiff acted in bad faith. Here, Plaintiff represented that he received no funds from any
21 source, but now admits that he receives support from his mother. Moreover, although he stated
22 that he had no assets, he had enough money to pay the filing fee shortly before filing his
23 complaint, but he spent the money in what appears to be an attempt to avoid paying the filing fee.
24 Other courts have found bad faith where “prisoner-plaintiffs have diverted funds in the period
25 leading up to their IFP application.” *Witkin v. Lee*, 2020 WL 2512383, at *4. Moreover, despite
26 the Court giving Plaintiff a chance to explain his false statements, he has provided no satisfactory
27 explanation, and in fact continues to falsely claim that he has no cash or other assets. Even setting
28 aside Plaintiff’s expenditure of over \$200 shortly before filing this complaint, he still had a
balance of \$227.04 when he submitted his IFP application.

III. CONCLUSION AND RECOMMENDATIONS

1. Plaintiff's application to proceed *in forma pauperis* (ECF No. 2) be denied; and
2. Plaintiff be ordered to pay the \$405 filing fee in full should he wish to proceed in this case.

Plaintiff is advised that failure to file objections within the specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

Dated: **December 15, 2023**

/s/ Eric P. Grogg
UNITED STATES MAGISTRATE JUDGE